

STATE OF MICHIGAN
COURT OF APPEALS

SHERRI LYNNE HEATH,

Plaintiff-Appellant,

v

CITY OF MONTROSE, ELDON DUNKLEE,
DEBORAH GROSS, NORVILLE LANDES, and
JOHN C. NEWCOMER,

Defendants-Appellees.

UNPUBLISHED
September 29, 2005

No. 254234
Genesee Circuit Court
LC No. 02-074713-CZ

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Plaintiff claims an appeal from an order assessing costs pursuant to MCR 2.114(E). We affirm.

Defendants adjourned a special meeting of the Montrose City Council before plaintiff had an opportunity for public comment. Realizing that they should have provided an opportunity for plaintiff to address the council, defendants allowed her to address the council at a subsequent meeting on the topics raised during the previous meeting. Nevertheless, plaintiff sued defendants for damages alleging a violation of the Open Meetings Act (“OMA”), MCL 15.261 *et seq.* The OMA provides damages for an intentional violation of the Act. MCL 15.273.

Following a bench trial, the trial court entered a judgment of no cause of action. The trial court found that defendants violated the OMA by adjourning the meeting before providing an opportunity for public comment. But the court also found, based on the complete absence of evidence, that defendants’ violation was not intentional.¹ The court further concluded that defendants corrected their violation of the OMA under MCL 15.270(5) by providing plaintiff the opportunity at a subsequent meeting to comment on the topics raised during the previous meeting. The meeting at which plaintiff was permitted to speak occurred before plaintiff filed suit, so any violation of the OMA had been cured before suit was filed.

¹ Plaintiff did not testify and the only witnesses she presented were to authenticate exhibits.

The court also granted defendants' post trial motion for sanctions under MCR 2.114(E). The court reasoned that plaintiff's claim for damages was frivolous because she presented no evidence that defendants' violation of the OMA was intentional as required of a claim for damages under MCL 15.273.

On appeal, plaintiff argues that the trial court's finding that her claim was frivolous was clearly erroneous. She contends that the trial court found that defendants violated the OMA and that the court mistakenly relied on defendants' attempt, under MCL 15.270(5), to correct their violation of the OMA by allowing her to address a subsequent meeting. As plaintiff argues, it appears that, under *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 90; 669 NW2d 862 (2003), a "reenactment" remedy is limited to claims to invalidate a substantive decision of a public body and does not apply to claims for damages arising from an alleged procedural irregularity.

However, even if plaintiff prevails on this point, she still has not shown any evidence that defendants intentionally violated the OMA, which is required of a claim for damages.² MCL 15.273. Thus, she has not shown that the trial court clearly erred in finding that her claim was not warranted by law or fact and was, therefore, frivolous.

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Pat M. Donofrio

² The trial court also held that plaintiff failed to establish any damages as a result of the violation of the OMA.